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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,627	01/16/2004	Raymond Findleton	P68.2-11447-US01	1231

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VIDAS, ARRETT & STEINKRAUS, P.A.  
SUITE 400, 6640 SHADY OAK ROAD  
EDEN PRAIRIE, MN 55344

EXAMINER
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CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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08/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/759,627

Applicant(s)

FINDLETON, RAYMOND

Examiner

/Stephen J. Castellano/

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-23 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) ☐ Notice of Informal Patent Application  
 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3781

The phrase “gripping member” is interpreted such that 112, sixth paragraph has not been invoked because the term “means” is not used. Therefore, “gripping member” will be broadly interpreted to include gripping members that are not disclosed as well as to include the disclosed gripping members.

**Important notes about interview that was conducted by SPE and applicant without primary examiner’s knowledge:**

(1) It appears that applicant made no attempt to contact the primary examiner first before contacting the SPE. The SPE did not have primary responsibility and signatory authority in the case as applicant should have known that the primary examiner had that authority, and retains that authority throughout prosecution. It is not Office policy that applicants review examiner names in an Office action and be given the option to pick and choose who they want to interview or who they want to act as the signatory authority.

(2) The interview is not supported by an interview summary relaying the Office’s position since the SPE has not prepared an interview summary. No agreement was reached in the interview.

(3) The date, time, type (personal interview, telephonic, video conference) and people involved have not been recorded.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

Art Unit: 3781

international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooke et al. (Cooke)(D248335).

Cooke comprises (1) a base, (2) a continuous wall forming a top opening, (3) gripping members (the exterior surface of two opposed pairs of walls) formed in the wall, the longer walls are spaced apart a shorter distance than the short walls and are believed to be a short enough distance such that one hand can grasp the container from under the base with a thumb of the hand on one wall and the remaining fingers of the hand on the opposed wall, (4) a dipping section (interior of container) and (5) an inclined tongue (the wall extending upwardly and outwardly of the long wall on the left side of Fig. 1) extending upwardly and outwardly from the wall adjacent to the dipping section.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Bebak (6419106).

Bebak comprises a base, continuous wall, gripping means (the two more expansive walls 14A, 15B which are spaced apart by a shorter distance and which can be gripped by one hand placed beneath the base with the thumb of the hand on one wall and the remaining fingers of the hand on the opposite wall), a dipping section and a tongue portion 16B. The top opening is unobstructed by portions 13A because these portion define the boundary of the top opening.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark.

Clark discloses a container for holding paint comprising a base, a continuous wall, gripping members (area contacted by the left hand in Fig. 2 which appears to be the lower part of two opposed walls at the inwardly indented portions of those walls) formed in the wall on opposite sides, a dipping section adjacent to the gripping members and extending below the annular shoulder and an inclined tongue portion (that portion of the vertical wall extending upwardly of the wiping bar and annular shoulder or ledge and below the upper lip and flange surrounding the open top, opposite to the wiping bar) extending upwardly and outwardly from the wall adjacent to the dipping section. The tongue portion allows paint to drip downwardly into a dipping section, the shoulder or ledge is not of sufficient radial depth to prevent paint from running over the shoulder or ledge into the dipping section. Clark discloses the invention except for the unobstructed opening which is obstructed by the wiping bar. It would have been obvious to remove the wiping bar for the following reasons: (1) if a wiping bar is not needed since wiping can be performed along an upper edge and the manufacture of the container is simplified with no wiping bar leading to cost savings and quicker production and (2) if the wiping bar is an obstruction to a brush or any other applicator or painting implement leading to unimpeded access.

Re claims 2-4, since the gripping member is vertically aligned with the center of gravity of a filled container, the torque will be negligible and no more than 0.6 ft-lb.

Re claim 5, the base length extends from top to bottom in Fig. 3 and 4 and the gripping means extends at least 50 % of the length.

Re claim 11, Fig. 1 and 2 disclose ridges on the gripping members.

Re claim 12 and 13, the tongue portion width can be selected to be substantially equal to dipping section width and within the range so that the dipping section width is in the range of 85% - 115% of the tongue portion width.

Re claim 16, it would have been obvious to select the size of the tongue portion such that the tongue accommodates a three inch brush to allow painting with a three inch or larger brush.

Re claim 17, it would have been obvious to extend the tongue portion upward at a 45 degree angle as motivated by a portion that drains fast enough yet allows a comfortable angle for wiping the brush.

Re claim 23, the arcuate section is the curve as one progresses from the ceiling of the recess forming the gripping member to the sidewall adjacent to the end opposite to the wiping bar for the gripping member on the right side of Fig. 2, the left side gripping member as shown in Fig. 2 has the arcuate section adjacent to the wiping bar.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooke.

Cooke et al. discloses the claimed invention except for the torque generated being no more than 1.0 or 0.8 or 0.6 foot-pounds. It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the torque generated to be no more than 1.0. or 0.8 or 0.6 foot-pounds since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272,205 USPQ 215 (CCPA 1980).

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bebak in view of Pereira Da Silva (6006901).

Bebak discloses the claimed invention except for the gripping means extending at least 50%, 45%, and 40% of said length. However, Pereira Da Silva teaches a container having recessed handles that extend at least 50% (which includes 45% & 40%) along the length of the base, thereby providing an alternate gripping means. Therefore, it would have been obvious to one of

Art Unit: 3781

ordinary skill in the art at the time of the invention to replace the handle of Bebak with that of Pereira Da Silva so as to provide an alternate gripping means that extends at least 50% (which includes 45% & 40%) along the length of the base.

Applicant's arguments filed July 16, 2007 have been fully considered but they are not persuasive.

The Clark rejection has been changed to a 103 rejection. Applicant states that the crossbar can't be removed. The crossbar can be removed from Clark because the container still functions to carry and dispense paint without the crossbar.

Applicant argues the lip or ledge of Clark prevents paint from dripping back into the dipping section. The lip might hinder the flow of paint to a very minimal extent. When enough paint is provided, the weight of the bead of paint will spill down the inside of the lip and drip vertically into the dipping section.

The statutory basis of the Cooke rejection has not changed, however, the element of the gripping member now reads upon a different part of Cooke.

The statutory basis of the Bebak rejection has not changed, however, the element of the gripping member now reads upon a different part of Bebak.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the


Art Unit: 3781

applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3781

sjc